

Regular Session Minutes

April 11, 2007

Members Present: Barry Kaplan, D.P.M., Board President
Joseph Leonetti, D.P.M., Member
Dedrie Polakof, D.P.M., Member
Jeanne Reagan, Secretary-Treasurer
Gloria Lederman, Public Representative

Staff: Linda Wells, Executive Director

Assist. Atty. Gen'l. Terrie Sanders

CALL TO ORDER

The regularly scheduled meeting of the Arizona State Board of Podiatry Examiners was called to order at 8:30 a.m., Dr. Kaplan presiding.

APPROVAL OF MINUTES

A. REGULAR SESSION MEETING MINUTES OF MARCH 14, 2007

Ms. Reagan moved to approve the March 14, 2007 regular session meeting minutes with the following amendment:

1. Strike the second paragraph on page 8 and indicate that the January, 2007 surgical report from Dr. Dershowitz is incomplete regarding complaint No. 05-19-M.

Ms. Lederman seconded. The motion passed 5-0.

COMPLAINTS BEFORE THE BOARD FOR FIRST TIME

07-03-C RAJESH DAULAT

The Board is in receipt of a complaint filed against Rajesh Daulat, DPM initiated by his patient, J.H. The Board is also in receipt of the patient medical records from the doctor.

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The complainant alleges practice below the standard of care and treatment i.e., Dr. Daulat amputated his big toe.

Dr. Polakof recused herself from the investigation due to being the patient's current treating physician.

The complainant was present before the Board to discuss his complaint. He waived confidentiality of his name, medical records, and current medical condition.

Following discussion, the Board tabled the complaint for further investigation, and requested an investigative interview with Dr. Daulat pursuant to A.R.S. §32-852.01(A) based on a possible violation of A.R.S. § 32-854.01.

The Board also requested the following:

1. Dr. Daulat's written summary of the complaint
2. Dr. Daulat's consultation at Arrowhead Hospital dated 8/24/06
3. Patient medical records from Boswell Medical Hospital
4. Patient medical records from John Conrad, M.D. service dates from July, 2006 to present

07-08-C LEWIS H. FREED

The Board is in receipt of a complaint filed against Lewis H. Freed, DPM initiated by his patient, J.S. The Board is also in receipt of the doctor's written response, and the complete patient medical records.

The complainant alleges practice below the standard of care and treatment following bunion surgery on her left foot. The complainant alleges the surgery performed by Dr. Freed had to be corrected by another physician, and she wants Dr. Freed to pay her expenses for the corrective surgery.

The complainant was present at the meeting to discuss her complaint. She waived confidentiality of her name, medical records, and current medical condition.

Following discussion, Dr. Kaplan moved to enter executive session at 9:20 a.m. for the purpose of receiving confidential legal advice. Ms. Reagan seconded. The motion passed 5-0.

The Board left executive session and entered regular session at 9:28 a.m.

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Following discussion, Dr. Kaplan moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Ms. Reagan seconded. The motion passed 5-0.

The Board based their decision to dismiss the complaint following review of the complete patient medical record, and hearing testimony from the complainant. The Board concluded that the quality of care and treatment rendered was within the standard of care.

07-09-C SCOTT MALING

The Board is in receipt of a complaint filed against Scott Maling, DPM initiated by his patient, S.B. The Board is also in receipt of the doctor's written response, and the patient medical records.

The complainant alleges practice below the standard of care and treatment, i.e. Dr. Maling made an incorrect diagnosis of his foot ailment(s), and prescribed the wrong medications that caused serious side effects.

Following discussion, the Board tabled the complaint for further investigation, and requested an investigative interview with Dr. Maling pursuant to A.R.S. § 32-852.01(A) based on a possible violation of A.R.S. § 32-854.01. The Board also requested the following documents:

1. Dr. Maling's typed patient progress notes
2. Dr. Maling's patient billing records

OPEN COMPLAINTS

07-07-C STEPHEN L. BARRETT

At a previous meeting, the Board tabled the complaint filed against Stephen L. Barrett, DPM, and moved to hold an investigative interview with him pursuant to A.R.S. § 32-852.01(A) based on a possible violation of A.R.S. §32-854.01.

The complainant alleges practice below the standard of care and treatment, i.e., Dr. Barrett performed a surgery that was not medically necessary, and tests were not performed to determine necessity. The complainant also alleges that Dr. Barrett was not qualified to perform the surgery.

The complaint is tabled pending the investigative interview scheduled for May 9, 2007.

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05-27-M ELAINE J. SHAPIRO

At a previous meeting, the Board tabled the malpractice complaint filed against Elaine J. Shapiro, DPM until final disposition is reached in Superior Court. The complaint was filed in the Pima County Superior Court by plaintiff, Carrie Marshall. The Board requested a monthly update on the status of the pending matter from Dr. Shapiro.

The plaintiff alleges negligent care, and as a result incurred lost wages and medical expenses in the past, and expects to incur further such losses in the future.

The Board is in receipt of a letter from Attorney, Bruce C. Smith informing them of the scheduled trial date.

The complaint is tabled until final resolution is reached at the superior court.

05-36-C GEORGE N. THOMPSON

At a previous meeting, the Board tabled the complaint filed against George N. Thompson pending the Board's order that he undergo an independent psychiatric evaluation by a psychiatrist of the Board's choice pursuant to A.R.S. §32-852.01(F). It was reported at a previous meeting that Dr. Thompson did not comply with the Board Order.

The complainant alleges unprofessional conduct, and excessive billing, i.e. Dr. Thompson received payment twice for services rendered, and billed an excessive fee.

At the April meeting, Dr. Kaplan moved to enter executive session at 11:00 a.m. for the purpose of receiving confidential legal advice. Ms. Reagan seconded. The motion passed 5-0.

The Board left executive session and entered regular session at 11:10 a.m.

Following discussion, the Board tabled the complaint for further investigation.

06-03-C GEORGE N. THOMPSON

At a previous meeting, the Board tabled the complaint filed against George N. Thompson, DPM pending the Board's order that he undergo an independent psychiatric evaluation by a psychiatrist of the Board's choice pursuant to A.R.S. §32-852.01(F). It was reported at a previous meeting that Dr. Thompson did not comply with the Board Order.

The complainant alleges practice below the standard of care and treatment, i.e. excessive length of time spent for an office visit, and billing an excessive fee.

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At the April meeting, Dr. Kaplan moved to enter executive session at 11:00 a.m. for the purpose of receiving confidential legal advice. Ms. Reagan seconded. The motion passed 5-0.

The Board left executive session and entered regular session at 11:10 a.m.

Following discussion, the Board tabled the complaint for further investigation.

06-04-C ALAN GAVECK – INFORMAL INTERVIEW

At a previous meeting, the Board tabled the complaint filed against Alan Gaveck, DPM and moved to hold an Informal Interview with him pursuant to §A.R.S. 32-852.01(D) based on a possible violation of A.R.S. §32-854.01(9), (20).

The complainant alleges practice below the standard of care and treatment rendered by Dr. Gaveck following surgery for a dislocated toe and torn cartilage that resulted in the toe being amputated.

BOARD ALLEGATIONS:

1. Dr. Gaveck failed to obtain written informed consent from patient, DO prior to performing the second surgery.
2. Dr. Gaveck failed to recommend that patient, DO obtain a vascular consultation or second opinion during her post operative care.

Dr. Gaveck was present with his attorney, Bruce D. Crawford for the Informal Interview. The complainant and her attorney were also present.

Dr. Kaplan instructed the parties on procedures that will take place when taking into consideration the findings of fact.

Dr. Gaveck was sworn in by the court reporter. The following witnesses were presented for swearing in: Jeffrey Page, DPM.

OPENING STATEMENTS

Attorney, Bruce D. Crawford gave an opening statement.

TESTIMONY OF DR. GAVECK

Dr. Gaveck testified that he obtained an initial consent form from the patient for the first surgery, and due to complications he considers the initial consent a continuation of the primary surgery. Dr. Gaveck also testified that he did not refer the patient for a vascular consult because he saw continuous improvement of the patient's toe post operatively up

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until the time he last saw her, and the patient did not call him post operatively with any complication.

TESTIMONY OF JEFFREY PAGE, DPM

Jeffrey Page, DPM testified that a consent form is not always necessary when there is a complication within three days of a primary surgery, and that the issue of obtaining a second consent form to address a complication of the primary surgery falls within a grey area. He also testified that Dr. Gaveck was very responsive to the patient's complications.

CLOSING STATEMENTS

Attorney, Bruce D.Crawford gave his closing statements.

BOARD DELIBERATIONS

The Board discussed their concerns regarding the standard of care and treatment of the patient post operatively.

VOTE

Dr. Polakof moved that the Board allegations stand. Ms. Reagan seconded. The motion passed 5-0.

Dr. Kaplan moved to issue a Decree of Censure and Probation. The terms of probation include the following:

1. One year probation
2. Monthly surgical reports of all surgical procedures with the exception of nail and wart procedures
3. Pre-approval of additional continuing medical education that includes a minimum of 15 hours in a class course in the area of surgical treatment, including a "hands on" component

Ms. Lederman seconded. Dr. Polakof voted aye, Dr. Leonetti voted aye, Ms. Reagan voted aye, Ms. Lederman voted aye, and Dr. Kaplan voted aye. The motion passed 5-0.

06-11-C GEORGE N. THOMPSON

At a previous meeting, the Board moved to table the complaint and Investigative Interview with Dr. Thompson pending the Board's order that he undergo an independent psychiatric evaluation by a psychiatrist of the Board's choice pursuant to A.R.S. §32-852.01(F). It was reported at a previous meeting that Dr. Thompson failed to comply with the Board Order.

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The complainant alleges excessive length of time spent for the initial office visit, and unsanitary office conditions.

At the April meeting, Dr. Kaplan moved to enter executive session at 11:00 a.m. for the purpose of receiving confidential legal advice. Ms. Reagan seconded. The motion passed 5-0.

The Board left executive session and entered regular session at 11:10 a.m.

Following discussion, the Board tabled the complaint for further investigation.

06-22-M ANDREW LOWY

At a previous meeting, the Board tabled the complaint filed against Andrew Lowy, DPM until a final disposition is reached in Superior Court. The complaint originated in the Maricopa County Superior Court by plaintiff, Barbara Rubin and was reported by Dr. Lowy on his license renewal application. The Board requested a quarterly update on the status of the case as it proceeds through the court to its final resolution.

The plaintiff alleges practice below the standard of care and treatment rendered by Dr. Lowy following surgery to remove a neuroma.

The Board is in receipt of a letter from Attorney, Bruce D. Crawford informing them that discovery is ongoing, and a trial date has not been set.

The complaint is tabled until there is final disposition of the case in superior court.

06-28-C GEORGE N. THOMPSON

At a previous meeting, the Board tabled the complaint filed against George N. Thompson, DPM for further investigation. The Board ordered that Dr. Thompson undergo an independent psychiatric evaluation by a psychiatrist of the Board's choice pursuant to A.R.S. §32-852.01(F). It was reported at a previous meeting that Dr. Thompson failed to comply with the Board Order.

The complainant alleges practice below the standard of care and treatment regarding her foot ailments, i.e. Dr. Thompson discussed issues not relevant to her foot conditions, and asked inappropriate questions relating to her deceased husband.

At the April meeting, Dr. Kaplan moved to enter executive session at 11:00 a.m. for the purpose of receiving confidential legal advice. Ms. Reagan seconded. The motion passed 5-0.

The Board left executive session and entered regular session at 11:10 a.m.

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Following discussion, the Board tabled the complaint for further investigation.

06-29-C MICHAEL DERSHOWITZ

At a previous meeting, the Board tabled the complaint filed against Michael Dershowitz, DPM initiated by his patient, A.S. and moved to hold an Investigative Interview with him pursuant to A.R.S. §32-852.01(A) based on a possible violation of A.R.S. §32-854.01. The Investigative Interview is scheduled to take place on April 11, 2007.

The complainant alleges that he was misled by Dr. Dershowitz and his staff regarding health insurance coverage for a neuropathy procedure he wanted the doctor to perform. The complainant alleges he changed health insurance companies as recommended by the doctor's office staff in an attempt to get coverage for the surgical procedure. When he presented his new insurance to the office, he was told that the procedure would still not be covered. The complainant alleges he paid out-of-pocket expenses for two office visits.

Dr. Dershowitz was present with his attorney, Bruce D. Crawford for the Investigative Interview. Mr. Crawford stated his objections to Dr. Leonetti and Dr. Kaplan investigating the complaint. Both doctors stated that they will not recuse themselves from the investigation, and that they will be fair and impartial in judging the complaint.

Dr. Dershowitz reviewed his diagnosis and treatment of the patient, and his billing process.

Following discussion, Dr. Kaplan moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Ms. Lederman seconded. The motion passed 5-0.

The Board based their decision to dismiss the complaint following review of the complete patient medical record, and hearing testimony from the complainant and Dr. Dershowitz. The Board concluded that the quality of care and treatment rendered was within the standard of care.

06-30-C LOREN WESSEL

At a previous meeting, the Board tabled the complaint filed against Loren Wessel, DPM initiated by his patient, H.F. and moved to hold an investigative interview with Dr. Wessel pursuant to A.R.S. § 32-852.01(A) based on a possible violation of A.R.S. §32-854.01.

The complainant alleges practice below the standard of care and treatment rendered by Dr. Wessel following bunion surgery. She also alleges that Dr. Wessel has not released her pre-operative x-rays upon request.

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Ms. Wells informed the Board that the investigative interview is scheduled to take place on May 9, 2007.

06-31-C ELAINE J. SHAPIRO

At a previous meeting, the Board tabled the complaint filed against Elaine J. Shapiro, DPM initiated by her patient, H.F. and moved to hold an investigative interview with Dr. Shapiro pursuant to A.R.S. §32-852.01(A) based on a possible violation of A.R.S. §32-854.01.

The complainant alleges practice below the standard of care and treatment rendered by Dr. Shapiro following surgery to remove and insert new screws from an initial surgery performed by another podiatrist. The complainant alleges that she continues to have pain and swelling as a result of the surgery.

Ms. Wells informed the Board that the investigative interview is scheduled to take place on May 9, 2007.

06-32-C BRANDON KIM

At a previous meeting, the Board held an Investigative Interview with Brandon Kim, DPM pursuant to A.R.S. §32-852.01(A) based on a possible violation of A.R.S. §32-854.01. Following the interview, the Board tabled the complaint pending further investigation.

The complainant alleges practice below the standard of care and treatment rendered by Dr. Kim following surgery on her left foot to reduce painful joints.

At the April meeting, the Board discussed their concerns following review of the complete patient medical record.

Following discussion, Dr. Kaplan moved to issue a Letter of Concern to Dr. Kim. Dr. Leonetti seconded. The motion passed 5-0.

The letter of concern will indicate the Board's concern regarding the following:

1. Inappropriate use of the billing code, 26530.

A copy of the letter will be sent to Footcare Center.

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07-02-C AMRAM DAHUKEY

At a previous meeting, the Board tabled the complaint filed against Amram Dahukay, DPM initiated by his patient, M.M. for further investigation. The Board requested a letter be sent to Dr. Dahukay requesting his response and action taken if any, regarding the patient's request for his records.

The complainant alleges non-receipt of his medical records from Dr. Dahukay following written authorization. The complainant alleges his request was for the doctor to forward his medical records to a government agency, and his request has gone unanswered for several months.

The Board is in receipt of a written response from Dr. Dahukay regarding the Board's request for further information.

Following discussion, Dr. Kaplan moved to dismiss the complaint finding no apparent violation of the Arizona Revised Statutes governing the practice of podiatry. Ms. Lederman seconded. The motion passed 5-0.

The Board based their decision to dismiss the complaint following review of the complete patient medical record. The Board concluded that the quality of care and treatment rendered was within the standard of care, and copies of the patient medical records were sent.

07-04-C KEVIN J. O'BRIEN

At a previous meeting, the Board tabled the complaint filed against Kevin J. O'Brien, DPM initiated by his patient, A.G. for further investigation. The Board requested a subpoena be issued to a second treating physician for copies of the patient medical records.

The complainant alleges practice below the standard of care and treatment following surgery to remove a bone spur and bunion from her left foot.

The Board is in receipt of the patient medical records from the second treating physician.

Following discussion, the Board tabled the complaint for further investigation, and requested an investigative interview with Dr. O'Brien pursuant to A.R.S. § 32-852.01(A) based on a possible violation of A.R.S. §32-854.01. The Board also requested the patient x-rays from the second treating physician.

PROBATIONARY STATUS REPORTS

05-02-C ROBERT FRIDRICH

Dr. Fridrich is currently on probation for a violation of the Arizona Revised Statutes governing the practice of podiatry. Patient surgical records are monitored monthly for compliance with a signed Consent Agreement and Order. At a previous meeting, the Board accepted the Amended Consent Agreement and Order that extends the probationary period another six months with new terms.

The Board is in receipt of Dr. Fridrich's February and March, 2007 surgery reports. Dr. Leonetti will review the patient charts and report his findings at the next meeting in May.

05-19-M MICHAEL DERSHOWITZ

Dr. Dershowitz is currently on probation for a violation of the Arizona Revised Statutes governing the practice of podiatry. Patient surgical records are monitored monthly for compliance with a signed Consent Agreement and Order.

Dr. Polakof reported review of patient charts from February , 2007. She reported that Dr. Dershowitz is in compliance with sending complete charts.

EXECUTIVE DIRECTOR'S REPORT

A. Review of March, 2007 Revenue and Expenditure Report

The Board reviewed the March, 2007 Revenue and Expenditure Report.

SUBSTANTIVE REVIEW & APPROVAL OF THE FOLLOWING APPLICANTS FOR ARIZONA LICENSURE:

Dr. Kaplan moved to approve the following applicants to sit for the oral examination to be administered on June 5, 2007:

1. Randy H. Bernstein
2. Susan J. Duffy
3. David W. Jolley
4. Matthew D. Jones
5. Lee T. Keenen
6. Spencer L. Nieman
7. Bryan J. Roth

Ms. Lederman seconded. The motion passed 5-0.

The Board suspended approval for oral examination pending further information from the following applicant(s).

1. Thomas J. McGrann

CORRESPONDENCE

A. Letter from Patrick M. Shannahan, Office of Arizona Ombudsman/Citizens' Aide

The Board is in receipt of a letter from Patrick M. Shannahan with the Office of Arizona Ombudsman/Citizen's Aide. The letter informs the Board of a complaint their office received from Michael Dershowitz, DPM. The letter also informed the Board of an investigation that will be conducted into the allegations made in his complaint.

A letter will be sent to Mr. Shannahan informing him that Ms. Wells will be the person to contact on behalf of the agency.

CALL TO THE PUBLIC

No public comment was received.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 11:33 a.m.

Respectfully submitted,

Linda A. Wells
Executive Director

APPROVED:

Barry Kaplan, DPM
Board President

